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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,027	09/04/2003	Barry Byron	33535/US	8490
25763 7590 04/22/2008 DORSEY & WHITNEY LLP INTELLECTUAL PROPERTY DEPARTMENT SUITE 1500 50 SOUTH SIXTH STREET MINNEAPOLIS, MN 55402-1498				
EXAMINER DESAL, HEMANT				
ART UNIT		PAPER NUMBER		
3721				
MAIL DATE		DELIVERY MODE		
04/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/656,027

Applicant(s)

BYRON ET AL.

Examiner

Hemant M. Desai

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 23, 25-33 and 35-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 23, 25-33 and 35-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

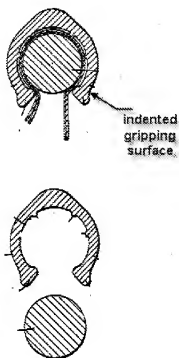
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 23, 25, 29-31, 33, 35 and 39-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulis, Jr. (3141221).

Faulis, Jr. discloses a sealing apparatus, comprising an elongated sealing member (12, fig. 3) and an elongated semi-cylinder receiver portion (13, fig. 3) having two circumferential portions, a closed circumferential portion having a circumference of at least 180° and an opened circumferential portion coupled to the closed circumferential portion, wherein the opened circumferential portion comprises a central opening extending along a length of the receiver portion, the central opening providing access to an engagement aperture for receiving the sealing member, the central opening is bracketed by first and second ridges (see fig. below) that extend along the length of the receiver portion, the opened circumferential portion further having first and second lugs (see fig. below) that extend along the length of the receiver portion, each lug having a proximal and distal end arranged outside of a plane corresponding the closed circumferential portion, the plane bisecting the length of the receiver between the closed circumferential portion and the opened circumferential portion, the distal end of

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the lugs coupled to the open circumferential portion spaced apart from the central opening and projecting generally outwardly away from the opened circumferential portion such that an intended gripping surface is provided between the first ridge and the first lug and between the second ridge and the second lug.



Faulis Jr., as shown in the figure above and mentioned in the rejection above, discloses the indented gripping surfaces on one side of the both lugs. Faulis Jr. does not disclose expressly the second indented gripping surfaces between said first ridge and said first lug and between said second ridge and said second lug.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the second indented surface because Applicant has not disclosed that the second indented gripping surface provides an advantage, is used for a particular purpose, or solves a stated problem.

One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the gripping surface (on one side of lugs) as taught by Faults, Jr. or the claimed gripping surfaces because both gripping surfaces perform the same function of providing grip to user for convenience and comfort to insert and open the sealing clip. Therefore, it would have been an obvious matter of engineering design choice to modify Faults, Jr. to obtain the invention as specified in claim 1.

Regarding claims 25 and 35, wherein the elongated sealing member has a circular cross-section (see figs. 2-3) and the engagement aperture of the receiver portion has an approximately circular cross-sectional shape (see figs. 2-3) that is configured to receive the sealing member.

Regarding claims 29 and 39, the coupling member is flexible that couples the sealing portion to the receiver portion (see col. 2, lines 36-38).

Regarding claims 30-32, 39, the sealing portion (12) and receiving portion (13) are formed of a resilient polymeric material (see col. 2, lines 36-38).

Regarding claim 33, the sealing apparatus of Faults, Jr., as mentioned above, meets all the claimed limitations of claim 33.

Regarding claims 40-42, the Faults, Jr. (3141221) discloses a method for sealing a bag (see fig. 1) using an apparatus (fig. 1) having an elongated sealing member (12) and an elongated receiver portion (13) having at least one engagement aperture configured to receive the sealing member (see fig. 1), the method comprising positioning a portion of a resealable bag (B, fig. 1) proximate to the engagement aperture, positioning the sealing member proximate to the portion of the resealable bag

and the engagement aperture, and pressing the sealing member into the engagement aperture of the receiver portion with the portion of the resealable bag interposed between the sealing member and the receiver portion (see fig.1), which meets all the claimed limitations.

Regarding claim 41, positioning a portion of a resealable bag proximate to the engagement aperture further comprises positioning an opening portion of the bag proximate to the engagement aperture (see fig. 1).

Regarding claim 42, pressing the sealing member into the engagement aperture of the receiver portion further comprises closing the resealable bag to form a hermetic seal therein (see fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faults, Jr. in view of U.S. Application No. US 2003/0188510.

Faults, Jr. meets all the claimed limitations, except for a handle. However, U.S. Application teaches a handle (16, figs. 1-3) to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver) (see page 1, paragraph 3, lines 9-11). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the handle as taught by U.S. Application No.

10/223647 in the bag sealing apparatus of Faulls, Jr. to facilitate holding and engaging rod portion (sealing portion) into the clamp (receiver).

5. Claims 27-28 and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulls, Jr. in view of Japanese Patent (8-248851).

Regarding claims 27-28 and 37-38, Faulls, Jr. discloses all the limitations except for a lanyard. However, Japanese Patent teaches that it is well known to provide lanyard (61, fig. 7) coupled to the receiver portion (22, fig. 7) in the bag sealing apparatus. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide lanyard in the bag sealing apparatus of Faulls, Jr. to prevent the lost of either receiver portion or sealing portion and thus to prevent the sealing apparatus from becoming unusable.

The modified sealing apparatus of Faulla, Jr. does not disclose expressly that the lanyard extends through the opening of the sealing portion. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the lanyard through the opening because Applicant has not disclosed that by extending the lanyard through the opening provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the lanyard (61) attached to the sealing portion and receiving portion as disclosed in the modified apparatus of Faulls, Jr. or the claimed lanyard extends through the opening of the sealing portion because both lanyards perform the same function to prevent lost of either the receiving portion or sealing portion and thus to prevent the sealing apparatus

form becoming unusable. Therefore, it would have been an obvious matter of design choice to modify the modified Faulls, Jr. to obtain the invention as specified in claims 27-28 and 37-38.

Response to Arguments

6. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hemant M. Desai whose telephone number is (571) 272-4458. The examiner can normally be reached on 6:30 AM-5:00 PM, Mon-Thurs..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hemant M Desai/
Primary Examiner, Art Unit 3721